

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 GREGORY MITCHELL,)
12 Plaintiff(s),) No. C 05-2432 TEH (PR)
13 v.) ORDER OF SERVICE
14 JIM HAMLET, et al.,)
15 Defendant(s).)
16

17 Plaintiff, a prisoner at the Correctional Training Facility in Soledad
18 ("CTF"), has filed a pro se civil rights complaint under 42 U.S.C. § 1983 and 28
19 U.S.C. § 1367 alleging deprivation of his First Amendment right to free exercise
20 of his religion, Islam, and various related state law claims. Plaintiff specifically
21 alleges that prison officials impermissibly burdened the practice of his religion by
22 failing to provide him with an adequate religious diet and by limiting his ability to
23 order/purchase religious artifacts such as prayer rugs and oil fragrances.

24 **DISCUSSION**

25 A. Standard of Review

26 Federal courts must engage in a preliminary screening of cases in which
27 prisoners seek redress from a governmental entity or officer or employee of a
28 governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable

1 claims or dismiss the complaint, or any portion of the complaint, if the complaint
2 "is frivolous, malicious, or fails to state a claim upon which relief may be granted,"
3 or "seeks monetary relief from a defendant who is immune from such relief." Id. §
4 1915A(b). Pro se pleadings must be liberally construed, however. Balistreri v.
5 Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
7 elements: (1) that a right secured by the Constitution or laws of the United States
8 was violated, and (2) that the alleged violation was committed by a person acting
9 under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

10 B. Legal Claims

11 In order to establish a free exercise violation, a prisoner must show the
12 defendants burdened the practice of his religion by preventing him from engaging
13 in conduct mandated by his faith without any justification reasonably related to
14 legitimate penological interests. See Freeman v. Arpaio, 125 F.3d 732, 736 (9th
15 Cir. 1997). Liberally construed, plaintiff's allegations state a cognizable § 1983
16 First Amendment claim, and related state law claims, against the named defendants
17 and will be served.¹

18 **CONCLUSION**

19 For the foregoing reasons and for good cause shown,

20 1. The clerk shall issue summons and the United States Marshal shall
21 serve, without prepayment of fees, copies of the complaint in this matter, all
22 attachments thereto, and copies of this order on the following defendants: A. O.

23
24 _____
25 ¹Former warden Jim Hamlet is dismissed because there are no allegations
26 whatsoever connecting him to any wrongdoing. And Does 1-20 are dismissed
27 without prejudice to plaintiff ascertaining their identities and seeking leave to
amend to add them within 60 days of this order. See Wakefield v. Thompson, 177
F.3d 1160, 1163 (9th Cir. 1999).

1 Amaya (food manager, CTF), Lockwood (business manager, CTF), Pat Baker
2 (associate warden, CTF), J. R. Solis (former acting warden, CTF), J. Brown (chief
3 deputy warden, CTF), Caravello (lieutenant, CTF), and N. Gannies (chief of inmate
4 appeals, Sacramento). The clerk also shall serve a copy of this order on plaintiff.

5 2. In order to expedite the resolution of this case, the court
6 orders as follows:

7 a. No later than 90 days from the date of this order, defendants
8 shall file a motion for summary judgment or other dispositive motion. A motion
9 for summary judgment shall be supported by adequate factual documentation and
10 shall conform in all respects to Federal Rule of Civil Procedure 56, and shall
11 include as exhibits all records and incident reports stemming from the events at
12 issue. If defendants are of the opinion that this case cannot be resolved by
13 summary judgment or other dispositive motion, they shall so inform the court
14 prior to the date their motion is due. All papers filed with the court shall be served
15 promptly on plaintiff.

16 b. Plaintiff's opposition to the dispositive motion shall be filed
17 with the court and served upon defendants no later than 30 days after defendants
18 serve plaintiff with the motion.

19 c. Plaintiff is advised that a motion for summary judgment under
20 Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.
21 Rule 56 tells you what you must do in order to oppose a motion for summary
22 judgment. Generally, summary judgment must be granted when there is no genuine
23 issue of material fact--that is, if there is no real dispute about any fact that would
24 affect the result of your case, the party who asked for summary judgment is
25 entitled to judgment as a matter of law, which will end your case. When a party you
26 are suing makes a motion for summary judgment that is properly supported by
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1 declarations (or other sworn testimony), you cannot simply rely on what your
2 complaint says. Instead, you must set out specific facts in declarations,
3 depositions, answers to interrogatories, or authenticated documents, as provided in
4 Rule 56(e), that contradicts the facts shown in the defendant's declarations and
5 documents and show that there is a genuine issue of material fact for trial. If you
6 do not submit your own evidence in opposition, summary judgment, if appropriate,
7 may be entered against you. If summary judgment is granted, your case will be
8 dismissed and there will be no trial. Rand v. Rowland, 154 F.3d 952, 962-63 (9th
9 Cir. 1998) (en banc) (App. A).

10 Plaintiff is also advised that a motion to dismiss for failure to exhaust
11 administrative remedies under 42 U.S.C. § 1997e(a) will, if granted, end your case,
12 albeit without prejudice. You must "develop a record" and present it in your
13 opposition in order to dispute any "factual record" presented by the defendants in
14 their motion to dismiss. Wyatt v. Terhune, 315 F.3d 1108, 1120 n.14 (9th Cir.
15 2003).

16 d. Defendants shall file a reply brief within 15 days of the date
17 on which plaintiff serves them with the opposition.

18 e. The motion shall be deemed submitted as of the date the reply
19 brief is due. No hearing will be held on the motion unless the court so orders at a
20 later date.

21 3. Discovery may be taken in accordance with the Federal Rules of
22 Civil Procedure. No further court order is required before the parties may conduct
23 discovery.

24 4. All communications by plaintiff with the court must be served on
25 defendants, or defendants' counsel once counsel has been designated, by mailing a
26 true copy of the document to defendants or defendants' counsel.

1 5. It is plaintiff's responsibility to prosecute this case. Plaintiff must
2 keep the court and all parties informed of any change of address and must comply
3 with the court's orders in a timely fashion. Failure to do so may result in the
4 dismissal of this action under Federal Rule of Civil Procedure 41(b).

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6 SO ORDERED.
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9 DATED: 12/13/05


THELTON E. HENDERSON
United States District Judge

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